IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

OP.No. 20383 of 1999(B)

PETITIONER:

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1. **THE MODERN BAKERIES EMPLOYEES UNION,**
   REP.BY ITS GENERAL SECRETARY,
   REGD. 315/69, EDAPPALLY, KOCHI-24.

2. **THE MODERN BAKERIES EMPLOYEES ASSOCIATION,**
   REP.BY ITS GENERAL SECRETARY,
   REGD. NO.35/78, EDAPPALLY, KOCHI 24.

BY ADV. SRI.THAMPAN THOMAS

RESPONDENTS:

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1. **THE MODERN FOOD INDUSTRIES(INDIA) LTD.,**
   REP.BY ITS MANAGING DIRECTOR,
   PALIKA BHAVAN, 3RD FLOOR, R.K.PURAM,
   RING ROAD, NEW DELHI.

2. **THE SENIOR GENERAL MANAGER,**
   MODERN FOOD INDUSTRIES (INDIA) LTD.,
   EDAPPALLY, KOCHI 24.

3. **THE EMPLOYEES STATE INSURANCE CORPORATION,**
   REP.BY ITS DIRECTOR GENERAL,
   E.S.I. BUILDING NEW DELHI.

4. **THE REGIONAL DIRECTOR, EMPLOYEES STATE,**
   INSURANCE CORPORATION, "PANCHADWEEP BHAVAN,
   NORTH SWARAJ ROAD, TRICHUR-20.

5. **UNION OF GOVERNMENT OF INDIA, REP.BY ITS**
   SECRETARY, MINISTRY OF LABOUR,
   SRAMASAKTHI BHAVAN, NEW DELHI.

BY ADV. SRI.
SMT.T.D.RAJALAKSHMI
SRI.P.HARIDAS, ADDL.CGSC
SMT.DEEPSUR D.JAYAN, ADDL.CGSC
SRI.E.R.VENKITESWARAN – R3 & R4

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/03/2007, ALONG WITH OP NO. 11706 OF 2004 WPC NO. 24551 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.33592/1999 IN OP. 20383/1999

DISMISSED

1.3.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER DT.16.7.92 OF THE PETITIONERS UNION TO THE 3RD RESPONDENT.

EXT.P2:- COPY OF THE REPLY OF THE 6TH RESPONDENT TO THE 1ST PETITIONER DT. IB 28.12.92.

EXT.P3:- COPY OF THE JUDGMENT DT.16.1.98 IN WA.NO.106/98 OF THE HONOURABLE HIGH COURT OF KERALA.

EXT.P4:- COPY OF THE INTERIM ORDER DT.5.2.99 IN OP.20332/98 IN CMP. 35800/98 OF THE HONOURABLE HIGH COURT OF KERALA.

EXT.P5:- COPY OF THE REPRESENTATION DT.15.1.98 SUBMITTED BY THE PETITIONERS UNIONS TO THE 4TH RESPONDENT.

EXT.P6:- COPY OF THE LETTER NO.MF/HRD-IR/1`5/8/99-2000 DT. 14.7.99 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE CERTIFICATE DT.5.8.99 OF THE DR.N.N.ASOKAN, MUVATTUPUZHA MEDICAL CENTRE, MUVATTUPUZHA.

EXT.P8:- COPY OF THE EXTRACT BILL IN THE NAME SRI,.PURUSHAN A.D., ISSUED BY THE ANITHA INSTITUTE OF MEDICAL SCIENCES & RESEARCH CENTRE, COCHIN-20, SR.27.5.99.

EXT.P9:- COPY OF THE NOTICE NO.CN/ADM/13/99-2000 DT.31.7.99 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO. 20383/99, W.P.(C)11706/04
& W.P.(C)24551/04 OF 2001

DATED THIS THE 1st DAY OF MARCH, 2007

JUDGMENT

O.P.No.20383/99 and W.P.(C)No.11706/04 filed by employees Unions representing workers of the Modern bakeries (India) Ltd. The prayers in those petitions are to declare that the Edappally unit of the Modern Food Industries (India)Ltd is not liable to be covered under the Employees State Insurance Scheme, in view of Sub Clause 4 of Section 1 of Employees State Insurance Act since the employer is providing medical facilities substantially similar to or superior to those provided under the Employees State Insurance Act .

2. W.P.(C) No. 24551/04 is filed by the two unions of employees of the Modern Food Industries (India) Ltd, Edappally challenging Ext.P1 order of the Government of India by which exemption applicable to M/s. Modern Food Industries (India) Ltd from the provisions of the ESI Act has been limited to the periods from 1.4.92 to 6.7.95 and from 1.1.97 to 13.7.01.

3. The question as to whether the employer is providing medical facilities substantially similar or superior to the benefits

provided under the Act, is a question of fact, which has to be proved by adducing evidence. The Employees State Insurance Act 1948 provides for a machinery for doing the same by way of filing an application under Section 75 of the said Act. From Ext.P7 order of the Employees Insurance Court, Alappuzha produced by the petitioners, I find that the jurisdiction of the Employees Insurance Court, Alappuzha had in fact been invoked in the matter also by filing I.C. No.21/2000 although the parties are not in a position to inform this Court as to what orders have been passed by the Insurance Court in those proceedings. That being so, the course open to the petitioner is to pursue the said I.C. to its logical conclusion .

Therefore in view of the fact that the petitioners have approached the employees Insurance Court for the same relief, it is not necessary to consider these writ petitions on merits. Accordingly the same are dismissed, but without prejudice to the right of the parties to take up the orders in the I.C. in appeal if the judgment in that I.C. is adverse to them.

S. SIRI JAGAN, JUDGE

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